

**Iowa Department of Natural Resources
Natural Resource Commission**

ITEM

8

DECISION

TOPIC

Notice of Intended Action – Chapter 78, Ginseng Harvesting and Sale

The Commission is requested to approve this Notice of Intended Action to amend Chapter 78, Ginseng Harvest and Sales. Chapter 78 provides the regulations for the harvesting, growing and dealing of ginseng in the state of Iowa. Ginseng is a plant species that is currently protected by the Convention on the International Trade of Endangered Species and regulated by the United States Fish and Wildlife Service. The Department is statutorily obligated to adopt rules to govern the harvest and sale of Ginseng in the state.

The proposed amendment will rescind and replace the existing chapter with the attached rules. These proposed changes better define wild and cultivated ginseng, green and dry ginseng, and those permitted to harvest and sell it, and prohibit harvesting or planting ginseng on state-owned and state-managed lands. This amendment also clarifies fees charged for licenses issued under these rules, restrictions and prohibitions for harvesting wild ginseng, and recordkeeping and reporting of ginseng transactions.

Lowell, Joslin, Law Enforcement Bureau Chief
Conservation and Recreation Division
December 11, 2008

Attachment: Notice of Intended Action - Chapter 78, Ginseng Harvest and Sale

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to rescind Chapter 78, “Ginseng Harvesting and Sale,” and adopt **new** Chapter 78, with the same title, Iowa Administrative Code.

The proposed amendment better defines wild and cultivated ginseng, green and dry ginseng, and those permitted to harvest and sell it, and prohibits harvesting or planting ginseng on state-owned and state-managed lands. This amendment also clarifies fees charged for licenses issued under these rules, restrictions and prohibitions for harvesting wild ginseng, and recordkeeping and reporting of ginseng transactions.

Any interested person may make written suggestions or comments on the proposed amendment on or before February 3, 2009. Such written materials should be directed to Mimi Habhab, Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa, 50319-0034; fax (515)281-6794; or e-mail Inga.Foster@dnr.iowa.gov. Persons who wish to convey their views orally should contact Mimi Habhab at (515)281-5034 or at Ms. Habhab’s office on the fourth floor of the Wallace State Office Building.

Also, the Department will hold a public hearing utilizing the Iowa Communications Network (ICN) on February 4, 2009, at 6 p.m. The ICN locations at which the public may participate are as follows:

State Historical Building
Room #157 - Heritage Classroom C
600 East Locust
Des Moines, Iowa

Iowa Western Community College
Room #112
2700 College Road
Council Bluffs, Iowa

Eastern Iowa Community College District
Room #300
326 West 3rd Street
Davenport, Iowa

Decorah Public Library
202 Winnebago Street
Decorah, Iowa

Central Community Jr.-Sr. High School
Room Number: 119
400 First Street NW
Elkader, Iowa

Fort Dodge Public Library
424 Central Avenue
Fort Dodge, Iowa

Clayton Ridge Middle School
502 W. Watson
Garnavillo, Iowa

Iowa City High School
1900 Morningside Drive
Iowa City, Iowa

North Iowa Area Community College
Room #119
500 College Drive
Mason City, Iowa

Hawkeye Community College

Tama Hall
1501 E. Orange Road
Waterloo, Iowa

Southeastern Community College
Trustee Hall Room #528
1500 West Agency
West Burlington, Iowa

At the public hearing, persons may present their views either orally or in writing. Persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment.

Any person who intends to attend a public hearing and has special requirements such as those related to hearing or mobility impairments should contact the Department of Natural Resources and advise of specific needs.

These amendments are intended to implement Iowa Code section 456A.24(11).

The following new chapter is proposed.

Rescind existing 571—Chapter 78 and adopt the following new 571—Chapter 78:

CHAPTER 78

GINSENG HARVESTING AND SALE

571—78.1(456A) Purpose. The purposes of these rules are to establish a program for the harvesting and sale of American Ginseng subject to the Convention on International Trade in Endangered Species (CITES) of wild fauna and flora, to provide for the time and conditions for harvesting the plant, and to provide requirements for the registration of growers, dealers and exporters, the records kept by dealers and exporters, and the certification of a legal taking. The goal of the department's program is to ensure that American Ginseng, a slow-growing plant with increased demand due to its medicinal and commercial value, remains a sustainable resource in the state of Iowa.

571—78.2(456A) Scope. These rules shall apply to all persons harvesting, cultivating and dealing American Ginseng in Iowa. However, these rules are not intended to apply to the trade or trafficking of American Ginseng that has been lawfully obtained and been processed, prepared, packaged or labeled in a manner intended for its final consumptive use.

571—78.3(456A) Definitions. All words and phrases used in these rules shall have their ordinary and customary meaning, except that the following words and phrases shall be defined as follows:

“Controlled conditions” means a nonnatural environment that is intensively manipulated by human intervention for the purpose of plant production. General characteristics of controlled conditions may include, but are not limited to, tillage, fertilization, weed and pest control, irrigation, or nursery operations such as potting, bedding, or protection from weather and artificial or natural shade and or light.

“Cultivated ginseng” means ginseng that is nurtured, artificially propagated or maintained under controlled conditions from a seed, cutting, division, callus tissue, other plant tissue, spore, or other propagule that has been derived from cultivated parental stock.

“Cultivated parental stock” means the ensemble of plants grown under controlled conditions that are used for reproduction and must be maintained in sufficient quantities for propagation so as to minimize or eliminate the need for augmentation from the wild.

Cutting or division. A plant grown from a cutting or division is considered to be artificially propagated only if the traded specimen does not contain any material collected from the wild.

“Dealer” means all persons who deal ginseng, which includes without limitation buying, selling, purchasing, holding, brokering, billing for, bartering, trading or otherwise receiving payment for wild or cultivated ginseng in Iowa for the purpose of selling or otherwise transacting wild or cultivated ginseng. The term “dealer” includes all persons, including without limitation harvesters, who sell ginseng to any person other than a dealer licensed pursuant to these rules or lawfully licensed in another state.

“Dealers permit” means a permit issued to a dealer by the department under these rules.

“Department” means the Iowa department of natural resources.

“Director” means the director of the Iowa department of natural resources or a designee.

“Ginseng” means all parts of the American ginseng (*Panax quinquefolius*) plant, including without limitation roots, leaves and seeds, which may be cultivated or wild. Ginseng, however, for purposes of these rules does not mean those parts of the American ginseng plant that have been processed.

“Green ginseng” means a root of wild ginseng from which the moisture has not been removed by drying. For the purpose of this chapter when calculating the amount of dried ginseng root which can be derived from green ginseng root, a ratio of three and three-tenths to one (3.3:1) by weight will be used.

“Grower” means a person who grows cultivated ginseng for the purpose of selling the ginseng.

“Growers permit” means a permit issued under these rules to a grower.

“Harvester” means any person who harvests, possesses, transports, cuts, gathers, destroys, digs or roots up wild ginseng for the purpose of selling the ginseng or for personal reasons or personal use.

“Harvesters permit” means a permit issued under these rules to a harvester.

“Nonresident” means a nonresident as defined by Iowa Code section 483A.1A.

“Permits” mean dealers permits, growers permits and harvesters permits issued under these rules.

“Resident” means a resident as defined by Iowa Code section 483A.1A.

“Wild ginseng” means an unprocessed plant, dry root or live root, seed or other part of ginseng, which is growing in or has been collected from its native habitat, including ginseng plants which have arisen from a cultivated seed that is planted in the wild, or which have been transplanted from a cultivated setting into the native habitat.

571—78.4(456A) Season for legal harvest. The season for legal ginseng harvest is September 1 to October 31.

571—78.5(456A) General prohibitions.

78.5(1) Harvest. No person shall, between November 1 and the following August 31, harvest dig, cut, root up, gather, intentionally disturb, or destroy ginseng, either wild or cultivated ginseng.

78.5(2) Sale. A person shall not sell ginseng between April 1 and August 31.

78.5(3) Sale and possession of green ginseng. A person shall not possess or transact green ginseng on or between November 21 and August 31, unless otherwise provided for by these rules.

78.5(4) State-owned and state-managed lands. In an effort to conserve and protect native stands of wild ginseng, the department shall prohibit introduction of non-native ginseng stock on state-owned and state-managed lands under the jurisdiction of the commission, except in narrow circumstances. As such, a person shall not, at any time, possess, harvest, dig, cut, root up, gather, plant, propagate, intentionally disturb or destroy ginseng or ginseng seed on state-owned and state-managed lands under the jurisdiction of the commission. Nothing in this section shall prohibit the department from taking measures itself on state-owned and state-managed lands under the jurisdiction of the commission to conserve and protect native wild ginseng, which may include without limitation planting and possessing seeds.

78.5(5) Certificate of origin. No ginseng dug, harvested or purchased outside the borders of Iowa which is not accompanied by a valid certificate of origin pursuant to rule 571--78.9(456A) shall be allowed to enter or be in the State of Iowa lawfully.

571—78.6(456A) Ginseng permits. The department shall issue growers permits and dealers permits upon the filing of a signed and complete application for each permit respectively. Applications shall be submitted on the form provided by the department and accompanied by payment of the appropriate fee, if applicable. Harvester permits are available for sale through the department's electronic licensing system of Iowa, which may be accessed at license agents throughout the state or on the department's website. The department shall not issue any permit if it determines such a permit or license will be detrimental to the survival of ginseng or will otherwise be in contravention of the laws of this state or the applicable federal laws. No person shall carry, possess or use any other person's permit issued pursuant to these rules, except as specifically provided by these rules.

78.6(1) Growers permits.

- a. All persons who grow cultivated ginseng are required to obtain a permit from the department to legally grow cultivated ginseng. There shall be no fee for the permit except for the charge associated with the electronic licensing system that is used to issue the permit.
- b. Applications for growers permits shall be made on the form provided by the department, shall be complete to be considered, and shall be executed by the person seeking the growers permit.
- c. Growers permits shall be valid for five years from the date of issuance.
- d. Applications for permit renewals must be filed with the department within 60 days of expiration of existing permits.

78.6(2) Dealers permits.

- a. All dealers in Iowa shall have a valid dealers permit issued by the department. Paid employees and family members of a dealer working at a dealer's primary place of business as identified on the dealers permit may operate legally under the dealers permit of the dealer. For purposes of this subrule, family members include the dealer's spouse, domestic partner, parents, siblings, and children.
- b. Applications for dealers permits shall be made on the form provided by the department, shall be complete to be considered, shall be executed by the person seeking the dealers permit, and shall be accompanied by a \$250 permit fee for residents and a \$500 permit fee for nonresidents. In addition, there shall be an additional charge associated with the electronic licensing system

that is used to issue the permit, if applicable. The department's issuance of the permit may take in excess of 60 days to complete.

c. Dealers permits shall be valid from September 1 until August 31 of the following year.

d. Dealers permits must be shown to the department when certifying ginseng and must be shown to harvesters or other dealers when buying ginseng.

78.6(3) Harvesters permit.

a. All persons who harvest wild ginseng must have a valid harvesters permit issued by the department and shall produce such permit upon the request of the department while engaged in harvesting activities, including the selling of the harvested ginseng.

b. Applications for harvesters permits shall be made on the form provided by the department, unless the harvester permit is purchased through the department's electronic licensing system of Iowa, and accompanied by a fee of \$35 for residents and \$65 for non-residents. In addition, there shall be an additional charge associated with the electronic licensing system that is used to issue the permit. Applications and harvester permits shall be signed by the applicant.

c. Harvesters permits shall be valid on and between September 1 and March 15 of the following year.

d. Harvesters with harvesters permits may sell wild ginseng from September 1 through March 15 of the following year.

e. Iowa harvesters with valid harvesters permits may retain no more than four ounces of dry wild ginseng, or equivalent amount of green ginseng or combination thereof, for personal consumption for one year beyond the expiration date of the permit. All wild ginseng possessed pursuant to this paragraph shall be for the harvester's personal use only and may not be lawfully sold.

f. No person may sell, barter or otherwise offer for sale any ginseng that has been unlawfully collected, obtained or possessed in violation of this chapter, the Code of Iowa, or the federal Code of Federal Regulations.

78.6(4) Duplicate permits. Duplicate growers permits, harvesters permits and dealers permits may be issued upon application to the department and the payment of five dollars plus any charges assessed to use the electronic licensing system to issue the duplicate permit, if applicable.

571—78.7(456A) Dealer's records.

78.7(1) Contents of records. Each permitted ginseng dealer shall keep individual, accurate, legible and complete records of each ginseng transaction on forms prescribed by the department. The department shall provide a reasonable number of these forms at no cost to the dealer. The dealer's record of each ginseng transaction shall include:

a. Date of transaction; and

b. Name and address of buyer or seller, whichever is applicable for the transaction; and

c. The harvesters permit or dealers permit number, if dealer is buying ginseng in the transaction; and

d. Description of the ginseng root transacted, including the weight of ginseng root transacted, as determined if it is or were dried, and whether the ginseng is dried or green; and

e. Name of the county or counties where the ginseng was harvested if purchased from a harvester; and

f. A copy of the certificate of origin signed by the seller, if applicable; and

g. Date in which the ginseng bought or sold was harvested; and

h. Additional information as may be requested by the department and included on the department's form.

78.7(2) Monthly reporting. Each dealer shall submit to the department copies of all records required by subrule 78.7(1) on a monthly basis, no later than the fifteenth day of each month.

78.7(3) Annual reporting. Dealers shall file an annual report with the department, on forms provided by the department, by April 15 including the following information:

a. A summary of all transactions that have occurred in Iowa from September 1 through March 31 of the following year; and

b. Inventory of any roots remaining in the dealer's possession in Iowa as of April 1, including certified weight and designation as wild ginseng or cultivated ginseng; and

c. If applicable, a statement that the dealer has no inventory of ginseng in Iowa as of April 1 if the dealer has no inventory of ginseng as of April 1.

Any certifications regarding weight required by this subrule shall be done through the department or its agents at locations designated by the department, upon appointment.

78.7(4) Record retention. All records required by this subrule shall be kept by the dealer for a period of three years after the expiration of the dealers permit.

571—78.8(456A) Dealer locations.

78.8(1) Generally. Ginseng dealers shall deal only at the location specified on the dealers permit or at the place of business specified on the license of any other dealer who holds a dealers permit in Iowa.

78.8(2) Dealer location permits. A dealer may deal at locations other than those provided for in subrule 78.8(1) with a location permit. Dealers may obtain location permits from the department. Each location permit shall be valid only for the location specified on the location permit and shall entitle the dealer to operate at that location in addition to the location specified in the corresponding dealers permit. The department shall, upon application and the payment of the applicable location permit fee, furnish a location permit to the dealer. The dealer location permit fee shall be \$5 for residents and \$50 for nonresidents, plus any charge assessed by the electronic licensing system used to issue the license, if applicable.

78.8(3) Duplicate location permits. Duplicate location permits may be issued upon application to the department and the payment of five dollars, plus any charges assessed to use the electronic licensing system to issue the duplicate permit, if applicable.

571—78.9(456A) Certificates of origin.

78.9(1) Shipments. Shipments of ginseng to points outside the state of Iowa by growers, harvesters and dealers shall be accompanied by a certificate of origin, or shipping certificate, which certify the ginseng was taken lawfully.

a. The department will issue certificates of origin for cultivated ginseng to growers or dealers upon application on the department's forms by the permit holder and based upon the completeness and sufficiency of permit holders' applications, and the permits holders' compliance with the requirements of this chapter. The department will provide application forms.

b. The department will issue certificates of origin for wild ginseng to harvesters upon application on the department's forms by the permit holder and based upon the completeness and sufficiency of harvesters permit holders' applications, and the harvesters permit holders'

compliance with the requirements of this chapter. The department will provide application forms.

c. The certificate of origin for wild ginseng will be issued by the department and its agents after the root has been weighed and certified by the department or its agents at one of the locations designated by the department, upon appointment.

d. Growers, harvesters and dealers seeking a certificate of origin must produce a valid permit for their respective capacities to receive a certificate of origin. This means that a grower must produce a valid growers permit, a harvester must produce a valid harvesters permit and a dealer must produce a valid dealers permit.

78.9(2) Fees. The department shall issues certificates of origin free to growers and dealers who lawfully possess growers permits and dealers permits, respectively, and for a fee of \$5 for each certificate to harvesters who lawfully possess harvesters permits.

78.9(3) Compliance. Certificates of origin shall be issued only to permit holders who have complied with the requirements of this chapter, including without limitation requirements regarding plant size for wild ginseng

78.9(4) Wild ginseng originating in another state.

a. No person may ship out of this state to a foreign country wild ginseng that originates in another state or foreign country unless the wild ginseng is accompanied by a valid certificate of origin issued by that other state or foreign country. No person may ship out of this state wild ginseng that originates in another state under a certificate of origin issued under this subsection.

b. No resident may import for purposes of dealing wild ginseng that originates in another state unless the wild ginseng is accompanied by a valid certificate of origin from the other state. Original certificates of origin shall remain with the wild ginseng at all times.

c. If a resident dealer receives wild ginseng that originated in another state and if a certificate of origin issued by that state does not accompany the wild ginseng, the dealer shall return the wild ginseng to the sender within 30 days after its receipt.

d. A dealer shall maintain a copy of the certificate of origin with the record of transaction.

e. It shall be lawful for any person to have in possession any wild ginseng lawfully harvested or purchased outside the state and lawfully brought into the state so long as they possess a valid certificate of origin.

571—78.10(456A) Inspection.

78.10(1) Any permit issued under this chapter shall be made available to the department, director, officer appointed by the department, peace officer, or, in the case of a harvesting permit, the owner in person in lawful control of the land upon which the licensee may be harvesting wild ginseng, at any time upon request. Any failure to carry or refusal to show or exhibit a valid permit while engaged or presumed to be engaged in the harvesting, growing or dealing ginseng in Iowa shall be a violation of this chapter. However a person charged with violating this rule shall not be convicted if the person produces to the department or to a court officer, within a reasonable time, a valid permit issued to that person and valid when the person was charged with a violation of this rule. Failure to make such permits available is a violation of these rules.

78.10(2) Any records required by this chapter to be maintained or submitted shall be produced for inspection upon request of the department, director, officer appointed by the department, or peace officer. Failure to maintain records or to submit reports as required by these rules is a violation of these rules.

78.10(3) Any person or dealer who has in possession any ginseng or part thereof shall upon request of the department, director, any officer appointed by the department, or peace officer show it to the department, director or officer; a refusal to do so is a violation of this chapter.

571—78.11(456A) Restrictions and prohibitions for harvesting wild ginseng.

78.11(1) Every person shall have in possession a valid permit issued by the department to harvest wild ginseng for the current harvest season when harvesting, cutting, rooting up, gathering, destroying, possessing or transporting wild ginseng.

78.11(2) No person shall harvest a plant unless the plant possesses three (3) or more true leaves or prongs and a flowering or fruiting stalk with red berries. For purposes of this rule, true leaves or prongs mean a compound leaves that include five (5) leaflets consisting of three (3) large leaflets and two (2) small leaflets. If, after removing a plant with the requisite leaves or prongs, as described above, it is determined the root has less than five (5) internodes, or root sections containing a stem scar, on the plant's rhizome, the person shall return the plant to the soil and make best efforts to return the plant and the surrounding area to its condition prior to harvest. In no event shall a person harvest or possess wild ginseng roots unless the root has at least five (5) internodes, or root sections containing a stem scar, on the plant's rhizome.

78.11(3) When harvesting wild ginseng, the entire plant, except the fruit and seeds, shall be retained with the plant until the plant is taken to the harvester's residence or place of business, as identified in the harvesters permit.

571—78.12(456A) Additional restrictions and prohibitions for wild ginseng.

78.12(1) Seeds.

- a. All persons harvesting wild ginseng shall plant all seeds collected from such plants within one-hundred (100) feet of the parent plant.
- b. A person shall use no other tool than their finger to plant seeds from wild ginseng, pushing it to a depth of no more than two inches deep into the soil.
- c. A person shall not possess or transport seed of wild ginseng more than one-hundred (100) feet from the site of the parent plant.

78.12(2) Dealing.

- a. A person shall not purchase or sell wild ginseng if the person knows or should have known the ginseng was harvested illegally.
- b. A dealer may not purchase wild ginseng without inspecting the harvesters permit. A dealer may not purchase wild ginseng if the dealer knows or should have known the harvester has violated this chapter.
- c. A person shall not buy, deal, purchase or otherwise transact seeds from wild ginseng.

571—78.13(456A) Compliance with laws. A person shall not violate any state, federal or local laws in harvesting, dealing or shipping ginseng.

571—78.14(456A) Violations of this chapter.

78.14(1) A person violating this chapter shall be subject to a schedule fine pursuant to Iowa Code section 805.8B, subsection 4 and license suspension, modification and revocation pursuant to 571--78.17(456A).

78.14(2) Separate offense. Each ginseng plant or parts thereof, including wild ginseng, unlawfully harvested, dealt, or shipped shall be a separate offense. More than one person per plant may be guilty of violating this chapter.

78.14(3) Materials determined by the department's law enforcement personnel to be contraband or taken in violation of this chapter may be seized and disposed of in conformance with chapter 809 of the Code of Iowa.

571—78.15(456A) Possession. In the possession of wild ginseng, including the shipping or transporting of wild ginseng, whenever a container includes one or more parts of wild ginseng that are unlawful, the entire contents of the container shall be deemed unlawful.

571—78.16(456A) Valuation. The value of ginseng seized in violation of these rules shall be based on the current market value, as determined by the department.

571—78.17(456A) Suspension, modification or revocation of permits. Permits issued pursuant to this chapter may be modified, suspended, or revoked, in whole or in part, by written notice, if the director determines that the permit holder has violated any section of this chapter or continuation of the permit is not in the public interest. Such modification, suspension, or revocation shall become effective upon a date specified in the notice. The notice shall state the extent of the modification, suspension, or revocation, and the reasons for the action. Within 30 days following receipt of the notice of a revocation or modification, or during the course of a suspension, the permit holder may file a notice of appeal, requesting a contested case pursuant to 561—Chapter 7. The notice of appeal shall specify the basis for requesting that the permit be reinstated.

571—78.18(456A) Reciprocity. Nonresident harvesters, growers and dealers from states that prohibit Iowa harvesters, growers and dealers to lawfully operate in their state are not eligible for permits issued by the department.

These rules are intended to implement Iowa Code section 456A.24(11).

Date

Richard A. Leopold, Director

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